· **THE HON'BLE SRI JUSTICE BILAL NAZKI**

AND

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

+ W.P.No. 20974 OF 2003

% Dated 02.11.2006

Kum. A. Geetha Jyothi

...Petitioner

Vs.

$ The High Court of Andhra Pradesh, Hyderabad,
represented by its Registrar (Administration),
and another

….Respondents

! Counsel for Petitioner: Mr. D.V. Sitharam Murthy

^Counsel for Respondents: Smt. M. Bhaskara Lakshmi,
S.C. for A.P.H.C.

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> HEAD NOTE:

? Cases referred
1) (2003) SCC 247

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF NOVEMBER
TWO THOUSAND AND SIX

PRESENT
THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.20974 of 2003

Between:

Kum.A.Geetha Jyothi.

..... PETITIONER

AND

1.The High Court of Andhra Pradesh,
Hyderabad,
rep. by its Registrar (Administration),
and another.

.....RESPONDENTS

The Hon'ble Sri Justice Bilal Nazki
and
The Hon'ble Sri Justice Nooty Ramamohana Rao

Writ Petition No.20974 of 2003

Order: ***(Per Hon'ble Sri Justice Bilal Nazki)***

Heard learned Counsel for the parties and perused the record.

The writ petitioner suffered a departmental enquiry for various charges. After enquiry, the second respondent-District Judge passed an order on 06-04-2000 accepting the report of the enquiry officer and imposing the punishment of withholding one increment of the petitioner with cumulative effect. Against the said order, the petitioner filed an appeal before the first respondent-appellate authority. While considering the appeal, the first respondent framed an opinion that certain charges, which had been proved against the petitioner, were very grave, therefore, an enhanced punishment was needed to be imposed on the petitioner. Accordingly, a show cause notice was given to the petitioner *vide* ROC.No.211/2000-CII/1, dated 21-02-2002, and the petitioner filed her explanation on 15-03-2002. After considering the explanation filed by the petitioner, the first respondent enhanced the punishment of withholding one increment, which is imposed by the second respondent, to the punishment of dismissal from service by virtue of order in ROC.No.211/2000-CII/1, dated 04-12-2002, which is the subject matter of this Writ Petition.

The order passed by the first respondent enhancing the punishment is challenged on various grounds, but we will be dealing with only two grounds while disposing of this

Writ Petition.

In the first instance, it is contended by learned Counsel for the petitioner that after the appeal was filed by the petitioner and a show cause notice was received, she filed an application along with her explanation on 15-03-2002 seeking permission of the first respondent to withdraw the appeal which was rejected by the Committee of Judges seized of the appeal.

The learned Counsel for the petitioner further submits that there is no rule in the Andhra Pradesh Civil Services (CCA) Rules, 1991,(for short 'the Rules') which gives a suo motu power to the appellate authority to modify the sentence imposed by the disciplinary authority. It is further contended that in an appeal filed against the punishment, the appellate authority can enhance the punishment, but once the appeal is withdrawn, the appellate authority has no power to decide the appeal.

We have perused the rules. No rule has been pointed out by the learned Standing Counsel for the respondents which would show that the appellate authority had any suo motu power to enhance the punishment imposed by the disciplinary authority.

On the other hand, the learned Counsel for the petitioner submits that once an appeal filed by the delinquent against the punishment is withdrawn by her, the appellate authority has no option but to dismiss the appeal

as withdrawn, and in fact, after such application is made, the appellate authority cannot exercise its power for modifying or enhancing the punishment. In this connection, the learned Counsel has relied on a judgment of the Supreme Court reported in ***M.D.Maharashtra Cotton Growers Market Federation Ltd. Vs. Choughule Popatrao Annasaheb and another.***[1] The facts of the case before the Supreme Court are identical to the present case. As the judgment of the Supreme Court is very short, we reproduce it in full:

> 'Leave granted.
>
> Heard counsel for the parties.
>
> Respondent 1 herein alleged to have committed certain misconduct, with the result that a departmental enquiry was initiated against him. The enquiry officer found the charges proved against the respondent. However, the disciplinary authority imposed a minor punishment. The enquiry officer directed for recovery of a sum of Rs.9000 from the respondent and stoppage of his promotion for a period of three years. Aggrieved, the respondent filed an appeal against the order imposing minor punishment. It is alleged that the respondent gave an application for withdrawal of the appeal. However, the Appellate Authority continued with the appeal and enhanced the punishment by passing an order of removal against the respondent. The respondent thereafter preferred a writ petition before the High Court challenging the order of the Appellate Authority. The writ petition was allowed in part. It is against the said judgment, the appellant is in appeal before us.
>
> After having heard learned counsel for the parties and perused the record, we are of the

> view that once the delinquent officer has withdrawn the appeal, there was no valid reason for the Appellate Authority to have proceeded with the appeal. Besides that there is no suo motu or any other power under Rule 53 of the Discipline and Appeal Rules with the Appellate Authority to enhance the punishment. We are therefore, in agreement with the view taken by the High Court.
>
> It was next submitted by Mr.L.N.Rao, learned Senior Counsel that in any view of the matter the High Court fell in error in directing the appellant to pay the entire arrears of salary to the respondent. We find merit in the argument. The respondent was found partially guilty of charge and inasmuch as he took regular employment after he was removed from service. In view of the facts and circumstances of the case, we modify the order directing for payment of entire arrears of salary and instead direct that the respondent be given half of the back salary.
>
> With this modification, the appeal stands disposed of.'

Coming to the second contention, we have seen that not only the report of the enquiry officer and the material on record, certain extraneous material has also been taken into consideration by the first respondent-appellate authority while framing the opinion of dismissing the petitioner from service. In the order passed by the learned Judges on administrative side before issuing the show cause notice for enhancement of punishment, the learned Judges noted that,

> 'The punishment of removal from service if awarded would be proportionate to the gravity of the charge proved. It may be mentioned here that the appellant is only a temporary employee

> in the unit of District Judge, West Godavari at Eluru, having been selected and appointed by the District Judge himself, without her name being forwarded by the Service Commission, due to exigency. She has not been regularized by the Service Commission and oblivious of the fact that her services had not been regularized, the appellant has exhibited a conduct which is unbecoming of an employee, showing utter disregard of the Officer, under whom she is working, by throwing away the files and threatening to report against him even to the District Judge.'

So, while deciding the appeal, the appellate authority, perhaps, thought it necessary to remove the petitioner from service, as she had not been appointed regularly and her name had not been forwarded by the Service Commission. This was not a matter, which had to be taken into consideration while deciding the appeal of the petitioner against the punishment which had been given to her, for alleged misconduct.

For these reasons, we allow the Writ Petition, set aside the order in ROC.No.211/2000-CII/1, dated 04-12-2002, passed by the first respondent. However, the order dated
06-04-2000, passed by the second respondent-District Judge imposing punishment of withholding one increment of the petitioner, is upheld. The petitioner shall be taken back into service immediately, and she shall be entitled to all the attendant benefits from the date, she was dismissed from service.

(Bilal Nazki, J)

2nd November, 2006

(Nooty Ramamohana Rao, J)

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NB:

L.R. Copies to be marked

(By Order)

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[1] **(2003) 6 SCC 247**